IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1438 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYNATH PETROLEUM - Petitioner(s)

Versus

BHUMSHANKAR MISHRA C/O HG DAVE - Respondent(s)

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Appearance :

MR KV GADHIA for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 04/08/2005

ORAL JUDGMENT

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1.0 The petitioner has challenged the award dated 10.03.1999 passed by the Labour Court, Rajkot in

Reference (LCR) No.1331 of 1985, whereby the petitioner was directed to reinstate the respondent to his original post with continuity of service and 75 % back wages.

2.0 The brief facts of the case are that the respondent herein was working as a Helper with the petitioner. It is the case of the petitioner that the respondent himself had left the job on 18.03.1985 and in spite of that had raised a dispute before the Labour Court stating that his services had been terminated by the petitioner on 06.05.1985. The Labour Court, after hearing the parties, passed the award with the aforesaid directions. Hence, this petition.

3.0 Mr. KV Gadhia learned advocate for the petitioner has submitted that though the petitioner is ready to take the respondent back in service, the respondent has not reported for duty. He has submitted that the Labour Court while considering the aspect of back wages has not given any reasons for awarding the same and had awarded it only as a matter of course, which is contrary to the law laid down by the Apex Court.

4.0 I have heard learned counsel for the petitioner and

perused the documents placed on record. Though served none appears on behalf of the respondent. Since the Advocate for the petitioner has stated that the petitioner is ready and willing to reinstate the respondent in service, the impugned award of the Labour Court qua reinstatement is not considered at this stage. If the respondent workman is willing to resume his duties with the petitioner, he shall approach the petitioner on or before 15.09.2005, failing which the order of reinstatement passed by the Labour Court will not remain in operation.

4.1 So far as the contention with regard to back wages is concerned, I am of the opinion that the Labour Court has not given any cogent reasons as to on what basis it has awarded the same. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be

passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua granting 75 % back wages is required to be quashed and set aside.

5.0 In above view of the matter, the petition is partly allowed. The impugned award of the Labour Court qua granting 75 % back wages is quashed and set aside. The remaining part of the award shall remain as it is, subject to the condition referred to herein above. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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